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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact: _____, ID No. _____

Telephone Number:

Refer Reply To:
CC:PSI:B04
PLR-156457-05

Date:
July 17, 2007

Legend

Taxpayer =
Spouse =
Trust =

Corporation =
Option Agreement =

a =
b =
c =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Year 5 =
Year 6 =
Year 7 =
Year 7 Plan =
Date 1 =

Dear :

This is in response to a letter from your authorized representative dated November 4, 2005, and subsequent correspondence, in which you request a ruling under § 2703 of the Internal Revenue Code.

Facts

The information submitted and the representations made are summarized as follows.

Taxpayer is an employee of Corporation. Corporation has a shares of voting common stock and b shares of nonvoting common stock currently outstanding. Except for voting rights, these shares are identical as to dividends and liquidation preference.

For more than 30 years, Corporation has maintained an executive stock purchase plan, Plan, that is offered to executives at the management level. Under Plan, an executive may purchase shares of Corporation's nonvoting common stock at a formula price. All shares purchased under Plan are subject to restrictions set forth in a stock restriction agreement that gives Corporation the right to repurchase shares under certain circumstances.

The times, or triggering events, under which Corporation's repurchase option becomes exercisable pursuant to stock restriction agreements under the Plan vary depending on the date the stock was issued and/or subjected to a stock restriction agreement. Under agreements entered into from Year 1 to Year 2, Corporation's repurchase option becomes exercisable upon any of the following events:

- (a) The executive (or his personal representative), the trustee of a trust for the benefit of the executive's family, or the executive's surviving spouse (or the surviving spouse's personal representative) sells or attempts to sell the shares without complying with the stock restriction agreement.
- (b) The executive ceases to be an employee other than as a result of retirement.
- (c) The executive dies without a spouse.
- (d) The executive dies with a spouse surviving, but the executive does not bequeath the stock to the surviving spouse or to a trust for the sole benefit of the spouse or for the benefit of the spouse and issue.
- (e) The earlier of the death of the surviving spouse and the expiration of ten (10) years after the executive dies with a surviving spouse and having bequeathed the stock in the executive's will to the surviving

- spouse or to a trust for the sole benefit of the spouse or for the benefit of the spouse and issue.
- (f) The executive (or his personal representative), the trustee of a trust for the benefit of the executive's family, or the executive's surviving spouse (or the surviving spouse's personal representative) notifies Corporation of his or her desire to sell the shares.
- (g) The executive defaults on a promissory note financing the purchase of the shares by the executive.

Under the stock restriction agreements entered into in Year 3, Corporation's repurchase option becomes exercisable upon any of the following events:

- (a) The executive sells or attempts to sell the shares without complying with the stock restriction agreement.
- (b) The executive ceases to be an employee other than as a result of retirement.
- (c) The executive dies.
- (d) The executive notified Corporation of his desire to sell the shares
- (e) The executive defaults on a promissory note financing the purchase of the shares by the executive.

Under the stock restriction agreements entered into from Year 4 to Year 5, Corporation's repurchase option becomes exercisable upon any of the following events:

- (a) The executive sells or attempts to sell the shares without complying with the stock restriction agreement.
- (b) The executive ceases to be an employee other than as a result of retirement.
- (c) The end of the 60th month after the month in which the executive retires.
- (d) The executive dies.
- (e) The executive notifies Corporation of his desire to sell the shares.
- (f) The executive defaults on a promissory note financing the purchase of the shares by the executive.

Under the stock restriction agreements entered into from Year 6 to the present, Corporation's repurchase option becomes exercisable upon any of the following events:

- (a) The executive sells or attempts to sell the shares without complying with the stock restriction agreement.
- (b) The executive ceases to be an employee other than as a result of retirement.
- (c) The end of the 60th month after the month in which the executive retires.
- (d) The executive dies.

- (e) All or any part of the shares are transferred or otherwise disposed of by operation of law, including a court order or decree in a divorce proceeding.
- (f) The executive notifies Corporation of his desire to sell the shares.
- (g) The executive defaults on a promissory note financing the purchase of the shares by the executive.

In Year 7, Corporation revised the formula price used to determine the price per share if Corporation exercises its option to repurchase shares subject to Plan agreements executed in the future as well as for all years prior to Year 7, the Year 7 Plan. According to the Year 7 Plan, the price per share will be determined according to a formula set forth in the Year 7 Plan, the Formula Price. As a result, if Corporation exercises its option to repurchase any shares currently subject to Plan, the price per share will be the Formula Price in all cases.

Taxpayer owns c shares of Corporation's nonvoting stock that is presently titled in the name of Taxpayer's revocable trust, Trust. Trust becomes irrevocable on Taxpayer's death. Article V, paragraph (e) of the trust instrument provides that, upon the death of the last to die of Taxpayer and Spouse, the assets remaining in the trust estate are to be distributed to certain charitable organizations.

Taxpayer's stock is subject to an option agreement, Option Agreement, dated Date 1. Date 1 is after October 8, 1990. Option Agreement was entered into on Date 1, pending receipt of a favorable private letter ruling from the IRS. Taxpayer and Corporation propose to enter into an Amendment to Option Agreement, the Proposed Amendment. Paragraph 3 of the Proposed Amendment provides that Corporation will have the exclusive option to purchase any or all of Taxpayer's shares at a price per share equal to the Formula Price if Taxpayer desires to sell any or all of Taxpayer's stock. Pursuant to Paragraph 4 of the Proposed Amendment, Corporation is also granted an option exercisable upon the death of Taxpayer or Spouse, whichever is later, or the simultaneous death of Taxpayer and Spouse, to purchase any or all of Corporation shares held in Trust at the Formula Price.

You represent that Taxpayer and Taxpayer's family members do not own in the aggregate fifty percent or more of Corporation's stock. Further, you also represent that after Amendment to Option Agreement is signed by Taxpayer, more than fifty percent by value of Corporation stock subject to Corporation's repurchase right under Plan and under the Amended Option Agreement will be owned directly or indirectly (within the meaning of § 25.2703-6) by individuals who are not members of Taxpayer's family, as defined in § 25.2703-1(b)(3).

You have requested a ruling that § 2703(a) will not apply to the Proposed Amendment because the Proposed Amendment meets the exception set forth in § 25.2703-1(b)(3).

Law and Analysis

Section 2703(a) provides that the value of any property shall be determined without regard to (1) any option, agreement, or other right to acquire or use the property at a price less than the fair market value of the property (without regard to such option, agreement, or right), or (2) any restriction on the right to sell or use such property.

Section 2703(b) provides that section 2703(a) shall not apply to any option, agreement, right, or restriction which meets each of the following requirements:

- (1) It is a bona fide business arrangement.
- (2) It is not a device to transfer such property to members of the decedent's family for less than full and adequate consideration in money or money's worth.
- (3) Its terms are comparable to similar arrangements entered into by persons in an arms' length transaction.

Section 25.2703-1(b)(3) provides that a right or restriction is considered to meet each of the three requirements described in § 2703(b) if more than 50 percent by value of the property subject to the right or restriction is owned directly or indirectly (within the meaning of § 25.2701-6) by individuals who are not members of the transferor's family. In order to meet this exception, the property owned by those individuals must be subject to the right or restriction to the same extent as the property owned by the transferor. The transferor's family include the persons described in § 25.2701-2(b)(5) and any other individual who is a natural object of the transferor's bounty. Any property held by a member of the transferor's family under the rules of § 25.2701-6 (without regard to § 25.2701-6(a)(5)) is treated as held only by a member of the transferor's family.

In the present case, after the Proposed Amendment to Option Agreement is signed by Taxpayer, more than fifty percent by value of Corporation stock subject to Corporation's repurchase right under Plan and under the Proposed Amended to Option Agreement will be owned directly or indirectly (within the meaning of § 25.2703-6) by individuals who are not members of the Taxpayer's family, as defined in § 25.2703-1(b)(3).

Further, it is represented that, upon execution of the Proposed Amendment to Option Agreement Taxpayer's stock will effectively be subject to the same rights and restrictions as Corporation stock subject to Plan. Specifically, the formula used to compute the purchase price if Corporation exercises its option to repurchase stock is identical under the Proposed Amendment to Option Agreement and under Plan. The event triggering Corporation's repurchase option may not be identical in some cases.

However, under the Proposed Amendment to Option Agreement, Corporation has the option to purchase Taxpayer's stock should Taxpayer decide to sell any or all of Taxpayer's shares, or upon the death of Taxpayer or Spouse, whichever is later, or the simultaneous death of Taxpayer and Spouse. This provision is consistent with similar provisions under Plan, as outlined above.

Accordingly, based on the facts and representations, we conclude that § 2703(a) does not apply to the Proposed Amendment because the Proposed Amendment meets the exception set forth in § 25.2703-1(b)(3).

The rulings contained in this letter are based upon information submitted and representations made by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

George L. Masnik
Chief, Branch 4
Office of the Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes
Copy of this letter